

## **REMARKS**

Reconsideration of the subject application in view of the present amendment is respectfully requested.

By the present amendment, claims 1, 8, 16 have been canceled. Claims 21-25 have been added. Claims 2, 3, 5, 9, 10, 17, 19 and 20 have been amended to provide their proper dependency and/or to eliminate an alleged indefiniteness therein.

Based on the foregoing amendments and the following remarks, the application is deemed to be in condition for allowance, and Action to that end is respectfully requested.

### **I. Rejection of Claims Under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite, pointing the specific language in claim 1, rendering this claim and claims dependent thereon indefinite.

The Examiner also requested to delete the terms such as “and/or” and “substantially.”

As noted above, claim 1 has been canceled, together with claims 8 and 16. It is respectfully submitted that all of the claims 2-7, 9-15, and 17-25 comply with all of the requirements of 35 U.S.C. § 112.

The term “and/or” has been deleted. As to the term “substantially,” it is respectfully submitted that according to MPEP § 2173.05 (b) “Relative Terminology,” this term is not indefinite.

It is further respectfully submitted that claims 21, 22, and 9-14 and 17-18 are in condition for allowance. Claims 21 and 22 correspond in scope to claims 8 and 16 which, together with claims 9-14 and 17-18, were indicated as being allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph and to include all of the limitations of the base claim and any intervening claims. Accordingly, claims 21 and 22 which are claims 8 and 16 so rewritten, and claims 9-14 and 17-18 dependent on claims 21 and 22, respectively, are in condition for allowance.

## **II. Rejection Over the Prior Art**

The Examiner rejected claims 1-7, 15 and 19 under 35 U.S.C. § 102(b) as being anticipated by Yamamoto, U.S. Patent No. 5,893, 676 (Yamamoto). It is respectfully submitted that claims 1-7, 15, and 19-25 are patentable over Yamamoto.

Specifically, claim 23 recites that the operating element has at least one tooth a tip of which projects beyond a plane of tips of the teeth of the at least one of the opposite racks in an outwardly preloaded position of the operating element, and is located opposite a side flank of a tooth of another of the opposite toothed racks when the tips of the teeth of the opposite racks are located directly opposite each other.

It is respectfully submitted that the foregoing novel features of the present invention are absent from Yamamoto.

Yamamoto indeed discloses an operating element that prevents tips of the teeth of the opposite toothed rack from being located opposite each other during closing of the clamping device. The operating element in Yamamoto is formed by a cylindrical pin (260) provided at an edge of one of the components and pressed against an edge-side inclined surface of the component with a spring stirrup. The operating pin is arranged sidewise of the rack of this component and projects past the tips of the teeth of the rack of this component in its preloaded basic condition.

When the components are in a position, in which the tips of the teeth of the racks of both components are located opposite each other, and the components are displaced, the pin engages a side flank of the opposite tooth.

After a small displacement or rolling over along the side flank, the pin contact both side flanks of adjacent teeth, as shown with dash lines in Figs. 2 and 4. As a result, upon further closing of the clamping device, the edge-side inclined guide surface (36 or 116) of the component (14), on which the pin is provided, slides along the adjacent surface of the pin. This results in the spring stirrup bending open and in the sidewise displacement of the two component towards each other, with the teeth of the opposite racks engaging each other.

However, at certain positions of the two components, the two racks may not synchronously displaced in engagement with each other. Thus, when the pin-shaped operating element is located in the vicinity of a tip of an opposite tooth during the displacement of the two racks, it may happen that the pin would remain in this position during further closing of the clamping device when the guide surface (38 or 116) of the component slides along the pin. As a result, the tips of teeth of the rack of this component can so engage the opposite teeth that further displacement of the two components would be blocked.

These positions of the two components are shown in Figs. 2A and 4A (Exhibit "A" enclosed herewith) which correspond to Figs. 2 and 4 of Yamamoto. In Figs. 2A and 4A, the two components are displaced sidewise relative to each other. When in these positions, the component (14) slides, with

its edge-side guide surface (36 or 116), over the pin (40 or 112) that remains in the position shown in Figs. 2A and 4A, the teeth of the two racks cannot engage each other.

This problem is further aggravated if the Yamamoto device does not insure a good parallel displacement of the two components (12, 14). When the sidewise-held pin engages the tip of a tooth of the opposite component (16), it can cause tilting of the two components (12, 14), which further increases the danger of blocking of the pin and the tip. However, insuring an exact parallel displacement of the two components would require additional expenses.

A further drawback of the Yamamoto device consists in that the path of displacement of the two components against the biasing force of the spring stirrup is relatively large, and retaining of the pin with a spring stirrup is not very reliable for a lasting operation required by an all-day operation of a motor vehicle.

Moreover, a side displacement of the two components requires a relatively large force which, dependent on the construction and the adjusting direction can vary in a range from 40 to 160 N. This further affects the reliability of the proper functioning of the Yamamoto device.

The Office Action alleges that the guide (pin) (260) has a tip, referring to a bottom surface at each end of the pin (260). Applicant respectfully disagrees with this assertion. A cross-section of the cylindrical member cannot have a tip (“tip” – an end of a pointed or projecting object, The American Heritage Dictionary of English Language, Fourth Edition, Houghton Mifflin Co., 2000). The edge of the circular end section of the pin (260) does not project beyond the circumferential surface of the pin.

Furthermore, the pin (260) is not a tooth (“tooth” – a projecting part resembling a tooth in shape and function, as on a comb, gear, or saw (*ibid*).

It is the fact that the operating element has a tooth with a tip which substantially improves the adjusting function of the device according to the present invention over that of Yamamoto. This is because locking takes place only after the tip reaches the deepest point of the bottom of the valley between adjacent teeth of the opposite component. In Yamamoto, the pin engages, as shown in Figs. 2 and 4, only upper section of side flanks of adjacent teeth.

A rejection based on U.S.C. § 102 as in the present case, requires that the cited reference disclose each and every element covered by the Claim. Electro Medical Systems S.A. v. Cooper Life Sciences, 32 U.S.P.Q. 2d 1017, 1019 (Fed. Cir. 1994); Lewmar Marine Inc. v. Barient Inc., 3 U.S.P.Q. 2d 1766,

1767-68 (Fed. Cir. 1987); Verdegaal Bros., Inc. v. Union Oil Co., 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit has mandated that 35 U.S.C. § 102 requires no less than “complete anticipation . . . [a]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983); See also, Electro Medical Systems, 32 U.S.P.Q. 2d at 1019; Verdegaal Bros., 2 U.S.P.Q. 2d at 1053.

As discussed above, Yamamoto does not disclose operating element having a tooth with a tip. Since Yamamoto fails to disclose each and every feature of independent Claim 1, Yamamoto, as a matter of law, does not anticipate the present invention, as defined by said independent claim.

In view of the above, it is respectfully submitted that Yamamoto does not anticipate or make obvious the present invention as defined in Claim 23, and the present invention is patentable over Yamamoto.

Claims 2-7, 15, 19 and 20 depend on claim 23 and are allowable as being dependent on an allowable subject matter.\

Claim 24 recites that the component with the at least one tooth rack has a recess and the operating element is arranged in the recess for displacement in a

direction perpendicular to the plane of tips of the teeth of the at least one of the opposite toothed racks.

With the displacement of the operating member perpendicular to the plane of tips of the opposite tooth rack, a simple and robust construction is obtained.

In Yamamoto, no displacement of the pin perpendicular to the plane of tooth tips of the opposite tooth rack is not possible.

Claim 25 recites that the radius of the tip at least one tooth of the operating element substantially corresponds to a radius of a bottom of a valley between two adjacent teeth of the another of the opposite toothed racks.

The structure of claim 25 is not disclosed in Yamamoto.

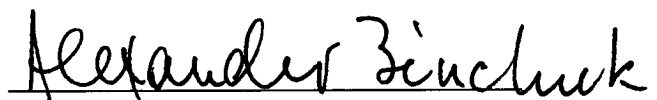


## CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects, in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully submitted,



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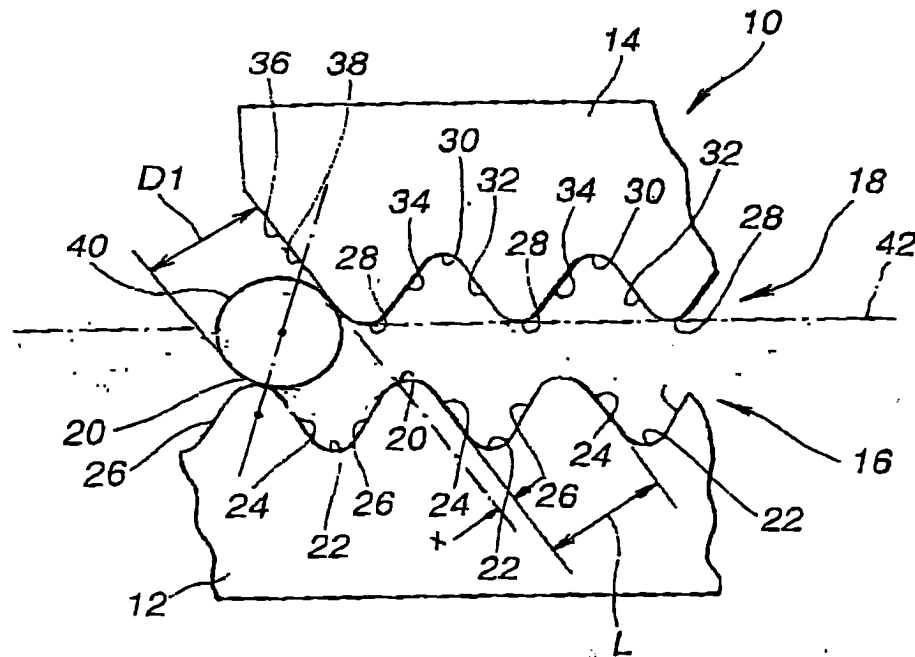
This correspondence is being deposited with the United States Postal Service on October 17, 2005 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number **ER 842,053 385 US** addressed to the Honorable Commissioner for Patents, Alexandria, VA 22313-1450.



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EXHIBIT "A"

**FIG.2 A**



**FIG.4 A**

